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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1942**

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## No. 1076 89

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JACKSONVILLE PAPER COMPANY, A CORPORATION,
*Petitioner,*

*vs.*

THE UNITED STATES.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS AND BRIEF IN SUPPORT THEREOF.**

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LOUIS KURZ,
THOS. B. ADAMS,
*Counsel for Petitioner.*

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JACKSONVILLE PAPER COMPANY, A CORPORATION,
*Petitioner,*

*vs.*

THE UNITED STATES,
*Respondent.*

---

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS IN CUSTOMS CASES Nos. 4395, 4396, 4397, 4398, 4399, 4400 AND BRIEF IN SUPPORT THEREOF.**

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*To the Honorable the Supreme Court of the United States:*

Jacksonville Paper Company, a corporation, with its principal place of business at Jacksonville, Florida, respectfully petitioning shows to the Court:

**Statement of Matters Involved.**

These proceedings involve six separate petitions for review of six separate protests for reliquidation and repayment of excess duties on six importations of kraft paper from Sweden in the year 1936. The cases were consolidated

for trial in the United States Customs Court and were likewise consolidated for the purpose of appear to the United States Court of Customs and Patent Appeals.

Primarily, three questions are involved:

**I. Were the findings of fact made by the United States Customs Court to the effect that the "entered values" were made by the importer under duress imposed by the Collector of Customs, conclusive upon the United States Court of Customs and Patent Appeals, it appearing from the record that the findings of the United States Customs Court were supported by substantial evidence?**

The United States Customs Court found as a matter of fact as shown by the decision (R. 73 and 75, bottom R. 83 and top R. 84) that the importer insisted on making the entries on the basis of invoice values but that the Collector of Customs refused to accept entries on that basis even though redelivery bonds would be filed in usual course and informed the importer that possession of the goods could only be obtained if entries were made on the basis of what was supposed to be foreign market values. This, said the Court (R. 84) amounted to "moral duress." That the importer was faced with the prospect of a shutdown (R. 47) if it did not get this merchandise as the shipments arrived. Therefore the entries as made were the result of duress thus imposed by the customs officials. The United States Customs Court however concluded (bottom R. 87) that no relief could be given to the importer because under its construction of the Tariff Act the court did not have power to relieve against the "entered value" and order a reliquidation of the duties on the basis of what had been found to be the legal basis of entry, to-wit, invoice values. The United States Court of Customs and Patent Appeals by decision handed down March 1st, 1943, as appears by the record in

this cause, disagreed with the United States Customs Court on the facts and reached the conclusion that there was no duress imposed by the customs officials (see next to last paragraph of the opinion). The United States Court of Customs and Patent Appeals also agreed with the Customs Court on the point that the Customs Court was without power to give any relief against the "entered value." The petitioner desires to have this Court consider and determine first whether the United States Court of Customs and Patent Appeals, like any other appellate court, is bound by the findings of fact made by the court below if there was substantial evidence to support those findings.

The second question is:

**II. Did the "entered value" made under duress acquire binding force because the importer failed to make a "duress entry" when the conditions defined by Section 503(b) of the Tariff Act (19 U. S. C. A.) 1503(b) did not exist?**

At R. 46 petitioner's president, Mr. McGehee, testified that at the time of the April entry, 1936, he did not know of any

> "similar case pending in reappraisements."

Also that he did not know about the case of *Arkell Safety Bag Co.* (a similar case) until about one year afterwards.

At R. 57 Judge Kincheloe who heard the testimony ruled

> "section 503(b) says there must be a pending case before there can be a duress entry."

Counsel for the government conceded that to be a correct ruling. At R. 52 Mr. Bobbitt, the deputy collector, testified that at the time of the April entry, the first one here involved,

> "I did not know of an appeal then pending."

On the same page he said that the collector took an appeal from the entry of March, 1936 (made by the importer at invoice price), but he said further that the Collector's appeal from that entry was not taken until after the April entry here in question.

Under 19 U. S. C. A., section 1501, the Collector had 60 days after the "Appraiser's report" on the March shipment within which to take his appeal.

On June 23rd, 1936, petitioner entered an appeal to reappraisement with respect to the April entry (see R. 39 and R. 54). Therefore the record is without conflict on the point that at the time of the April entry and at the time of the May entry and at the time of the June entry here in question no appeals to reappraisement were pending so far as was known by the importer or the customs officials. Moreover it was not possible for the petitioner as importer to have taken any appeal to reappraisement with regard to the April entry described in the first protest filed in this proceeding (R. 14, 17) because under 19 U. S. C. A., Section 1501, the importer must first receive

"written notice of appraisement"

from the customs officials, and must then act if at all in the taking of an appeal within 30 days after receipt of such notice. The printed record does not show when such notice was actually received by the importer, petitioner here, with regard to the April entry but the presumption arises that the first appeal entered by the petitioner of June 23rd, 1936, was less than 30 days after having received the statutory notice of appraisement. Therefore it was not possible for the petitioner to have entered any appeal on its own importations until *after* at least two entries had been made under duress as above shown. For like reasons it was not possible for the petitioner to have made any "duress

certificates" or so-called duress entries under the provisions of Section 503(b) of the Tariff Act, 19 U. S. C. A., section 1503(b), because no known appeal in a similar case was pending at the time of either of the first three entries here complained of.

The Customs Court (bottom R. 74) conceded that petitioner's auditor did not know of any pending appeal when the April entry was made and that he did not know about the *Arkell* case until after August 1936. The same concession was made as to Mr. McGehee, petitioner's president (bottom R. 76).

At R. 87 the Customs Court said:

> "We hold that, since there were no similar cases shown to have been pending for reappraisement or re-reappraisement, there was no justifiable basis for the duress entry."

and at R. 88 the Customs Court further said:

> "Both the government officers and the officials of the importing company testified that they did not know there was a test case pending on reappraisement at the time the entries in this case were filed."

Nevertheless the Customs Court proceeded to hold that the "entered values" though made under "moral duress" within the meaning of *Maxwell* v. *Griswold,* 10 How. 242, were binding upon the importer because of the last clause of Section 503(a) of the Tariff Act, 19 U. S. C. A., 1503(a), and in consequence that the court was powerless to give any relief. In arriving at this result the Customs Court (R. 87) said:

> "We overrule the plaintiff's claim in this case with extreme reluctance because we believe that the equities are all in favor of the importer."

When we turn to the opinion of the Court of Customs and Patent Appeals, page 3 (R. 90), we find this:

> "In making the entries the importer did not follow the provisions of section 503(b) of the Tariff Act of 1930, the so-called duress entry statute, and when the collector, on July 18, 1940, liquidated the six entries here involved he, evidently feeling himself bound by section 503(a) of the act, made liquidations upon the basis of the entered value which was higher than the finally appraised value."

In making that observation the Court entirely overlooked the showing contained in the evidence and in the opinion of the Customs Court to the effect that the conditions did not exist whereby the petitioner as importer could have made a so-called "duress entry." Again, at page 6 (R. 95) of the same opinion, we find this:

> "Mr. Bobbitt did state, in substance, that he did not know at that time (time of the April entry) and that Mr. McGehee did not know, of any pending test case, and that there was no conversation with regard to Mr. McGehee making a test case with respect to the April entry."

Nevertheless we find at page 8 of the same opinion (R. 97):

> "It was the duty of importer to protect its legal rights, which, as the trial court pointed out, it readily might have done by making a test case of the April 1936 entry."

The Court then attempted to give the petitioner some consolation by trying to place its omission on some lack of experience and lack of knowing the law, whereas under the undisputed facts of the record as above explained it was not possible for the importer to have taken any appeal on the April entry prior to written notice of appraisement and that according to the record it did not receive until

after May 23rd. In the opinion by Judge Keefe (bottom R. 66) he said:

> "The Appraiser advanced the entered price to equal 310 Swedish Kroner per 1000 kilos."

At page 33 of the record it appears that counsel for petitioner offered in evidence the record made in the reappraisement cases covering the six importations here involved but government counsel objected to that record and Judge Kincheloe (R. 34) sustained the objection. The record in those appeals to reappraisement showed the actual dates of the appraiser's reports and contained copies of the appraiser's reports and demands for additional duty. In the absence of those records we have by inference arrived at the fact that the appraiser's report on the April shipment was not made until after May 23rd. In order to clear up once for all this particular point as to the date of the appraiser's report we attach next below the original of the notice from Mr. Bobbitt, deputy collector, as received by petitioner under date of June 6th, 1936. The same is next attached:

(Here follows 1 photolithograph)

Customs Form 4981
TREASURY DEPARTMENT
ART. 863, C. R. 1931
Oct., 1931

# NOTICE TO IMPORTER OF ADVANCE IN VALUE UPON APPRAISEMENT

## United States Customs Service

DISTRICT NO. 18, PORT OF Jacksonville, Fla.

*Collector's Office,* June 5, 1935. WDD, 193

Sir:

The merchandise (kraft paper) entered by you under Cons.
(Kind of mdse.) (C. E., Free, or W. H.)
Entry No. Je307 dated April 17, 1936, 193 , per S. S.
TAMPA, has been appraised in accordance with law; the appraised value exceeds the entered value by 24 per cent.

Appeal from this appraisement, if dissatisfied therewith, must be filed with the Collector within thirty days after the date of this notice. (Section 501, Tariff Act of 1930.)

Respectfully,

K. R. Bobbitt,
*Deputy Collector.*
in Charge.

To Jacksonville Paper Co.,
808 West Bay St.,
Jacksonville, Fla.

U. S. GOVERNMENT PRINTING OFFICE: 1931 2—3565

As before stated, the petitioner took an appeal to reappraisement with regard to the April shipment on June 23rd, 1936, but necessarily this could not be done until receipt of notice of the appraisement. When the appeal to reappraisement was entered it then became the duty of the Collector to attach and file in the Court his own record as to the entries and also his demand for payment of additional duties and we attach next hereto the original of the demand for additional duties signed by K. R. Bobbitt, deputy collector, as received by the petitioner June 6th, 1936, which original demand is next attached:

(Here follows 1 photolithograph)

Customs Form 3293
TREASURY DEPARTMENT
Art. 311, C. R. 1931
Nov., 1932

NOTICE OF ESTIMATED DUTY DUE—DEMAND FOR PAYMENT OR RETURN OF UNEXAMINED PACKAGES

# United States Customs Service

DISTRICT No. 15, PORT OF Jacksonville, Fla.,
*Collectors, Office,* June 5, 1936. WDD, *193*

Your invoice covered by Consumption Entry No. J-307, or Warehouse Bond No. - - - - - - - - - S. S. TAMPA,
Date April 17, 1936, has been returned by the appraiser on June 5, 1936, 193 , with an {~~xxxxxxxxxxxxxxxx~~ addition to make market value} and there is an estimated additional duty due the Government of $ 5982.72 add'l. Total $7228.47 1245.75 ins.

Unless this deposit is paid within ten days from date, you are hereby ordered to deliver to the United States Appraiser's Warehouse the following-described merchandise, covered by said invoice:

| MARKS | NUMBERS | MERCHANDISE |
|---|---|---|
| JAX CABLE MADE IN SWEDEN | | Kraft Paper. |

In default of such delivery within twenty days from date, you are liable to liquidated damages in an amount equal to the invoice value plus the duty, as prescribed by Article 1256 (b), Customs Regulations of 1931.

H. R. Bobbitt,
Deputy *Collector.*
in Charge.

*To* Jacksonville Paper Co.,
808 West Bay St.,
Jacksonville, Fla.

2—8490

PLEASE PRESENT THIS NOTICE WITH RETURNED MERCHANDISE

U. S. GOVERNMENT PRINTING OFFICE: 1933

The record before the Customs Court on the appeal as to the April shipment also had endorsed thereon, as is now stated in Judge Keefe's opinion (R. 66), that the importer's "entered value" was equal to 285 Swedish Kroner per 1000 kilos less cash discount. The same entry also noted that the appraiser's advance was equal to 310 Swedish Kroner per 1000 kilos. All these things appeared by the Court's own record as to this very subject-matter and therefore the Court which reviewed the protests here involved could and should have taken judicial notice thereof. It is clear therefore from the record made in the appraisement cases as also from the opinion of Judge Keefe handed down therein February 26th, 1940 (R. 66, et seq.), that the importer's hands were tied by the nonaction of the Customs officials from April 17th, 1936, to June 5th, 1936. Therefore in the very nature of the case the petitioner as importer was not in position to have made any test case of the April entry until after June 6th, 1936, the date the notice of appraisement was received and under Section 501 of the Tariff Act it was entitled to take an appeal within thirty days thereafter. It is thus very clear that the petitioner was not in any respect remiss in doing anything which the Statute authorized for the protection of its own interest.

For similar reason the petitioner had no power to forthwith make a so-called duress entry by making out a "duress certificate" under Section 503 (b) of the Act, because it is conceded by both of the courts below that neither the importer nor the customs official knew of any case

> "then pending on appeal for reappraisement or rereappraisement."

The petitioner's hands were tied by the terms of the Statute and the failure of the Customs officials to give

> "Written notice of appraisement"

even as to the April entry, until after June 6th, 1936. In such circumstances it was not possible for the petitioner by any action or nonaction to relieve itself of the actual duress or "moral duress" existing at the time of the April entry and at the time of the May entry and at the time of the June entry imposed by the Customs officials.

The third question is:

**III. Did the United States Customs Court have jurisdiction or power to order a reliquidation of the duties on the legal invoice basis even though that basis was lower than the "entered value" when it clearly appeared from the record and was so found by the court that the importer made the "entered values" in question under duress imposed by the Collector of Customs?**

As before stated, the Customs Court agreed with the petitioner on the facts as to the matter of duress (see opinion bottom R. 83, top R. 84). In addition the record clearly shows that in March, 1936, prior to the beginning of the six entries here in litigation this importer had received a shipment of the same kind of paper from Sweden and the same had been entered at invoice price less nondutiable deductions and so, when the six entries here in question began in April, 1936, the importer insisted that the entries be made on the same basis, but the Collector of Customs informed the importer that entries on that basis would not be accepted and the merchandise would not be delivered unless the entries were made at a higher value supposed to represent the foreign market value. Such are the allegations of the several protests involved in this proceeding (R. 14 to 31). The evidence fully sustained those allegations and the opinion of the Customs Court agreed that the allegations were sustained (see recitals of evidence R. 73, 78, last paragraph R. 83, first half R. 84). Subsequently, as appears by the decision of Judge Keefe of the

Customs Court (R. 66 to 69) it was clearly determined that the invoice value, also known as the export value, was the correct dutiable value as applied to each of the six importations here in question. The importer under duress imposed by the Customs officials made each of the six entries at the rate of 285 Swedish Kroner per 1000 kilos as the supposed foreign market value, whereas the Appraisers finally came in pursuant to 19 U. S. C. A., Section 1501, and beginning June 5th, 1936, undertook to raise the alleged foreign market value to 310 Swedish Kroner per 1000 kilos. Judge Keefe held that there was no foreign market value because that market was a controlled market. Therefore the export value or invoice value was the only correct dutiable basis less certain nondutiable charges. That basis was $2.60 per hundred as contended for by the importer from the outset. The United States Customs Court, Third Division, as appears by its decision (R. 72 to 88) conceded the correctness of Judge Keefe's decision as to the dutiable values. Neverthless the Court concluded that it was bound by the language of Section 503(a) of the Tariff Act and therefore could not give the importer the benefit of the true export or invoice values because the "entered value" was the "higher" value.

The Court of Customs and Patent Appeals affirmed the decision of the Customs Court on two grounds. First, that there was in fact no duress. Second, that the importer failed to avail itself of the supposed privilege of making a duress entry as the means of protecting its rights. We have already pointed out that the second ground was untenable because neither the importer nor the Customs officials knew of any pending case and because the importer had no means of taking any appeal with respect to its own entry of April, 1936, until after the Appraiser's report came in and that did not occur until June 6th, 1936. Nevertheless the appellate court as also the Customs Court concluded that it had

no power to give the importer any relief. On the next to the last page of the opinion of the Court of Customs and Patent Appeals it is said:

> "Neither the United States Customs Court nor this court has been clothed with the authority of courts of equity, but, even if they were, the situation here is not one in which the plain language of the statutory law could be disregarded."

In the concluding part of the same opinion the Court said:

> "The importer has paid moneys to the Government in excess of the amount which would have been required of it upon the basis of the final reappraisements. That fact would incline us to give the importer the relief it seeks if we felt it within the scope of our authority so to do, but, for the reasons stated, we feel that we are without such authority."

So it is that both courts below have conceded the justness of petitioner's cause but both courts have denied relief by putting what we believe are erroneous constructions on the Tariff Act of 1930.

**Basis of Jurisdiction.**

The basis of this Court's jurisdiction to review the decision of the United States Court of Customs and Patent Appeals is Section 195, Judicial Code, as amended by the Act of June 17th, 1930, now 28 U. S. C. A., Section 308; also Rules 42 and 38 of this Court. The United States Customs Court denied all relief to the petitioner on a jurisdictional ground and the United States Court of Customs and Patent Appeals affirmed that decision by arriving at a different factual basis on which account the said decision of the United States Court of Customs and Patent Appeals is final subject to review only by writ of certiorari from this Court. *Cottman Co.* v. *Dailey,* 20 F. Supp. 142, affirmed 94

Fed. 2d, 85. *U. S.* v. *M. Rice & Co.*, 257 U. S. 536, 66 L. Ed. 357.

## Questions Presented.

In the statement of the matters involved we have already presented the three questions, the answers to which will bring about a solution of the matters dealt with by the courts below.

## Reasons Relied On for Allowance of the Writ.

*1. A Definite and Authoritative Rule Should Be Announced by this Court Defining the Limitations of Power of the Court of Customs and Patent Appeals in Reviewing Findings of Fact Made by the United States Customs Court.*

We find from annotations under 28 U. S. C. A., Section 308, that several cases have come to this Court on certiorari from the Court of Customs Appeals but those decisions were rendered prior to the Act of June 17th, 1930, redefining the prior law on the subject of customs appeals, including an amendment of what was Section 195, Judicial Code. Since that act went into effect we find a number of decisions by this Court reviewing decisions of the Court of Customs and Patent Appeals but apparently they were principally if not all infringement suits involving patents. So far as we have been able to find no decision has been rendered by this Court stating any limitation of the Court of Customs and Patent Appeals in the matter of reviewing questions of fact found and determined by the Customs Court either in an infringement suit or a case involving customs duties. The decision of the Court of Customs and Patent Appeals sought to be reviewed turns to a large extent upon a question of fact where that Court reached an opposite conclusion from the findings and determinations from the Customs Court. Such a result is contrary to the rule announced by this Court in the case of *McCaughn* v. *Real Estate Land T. & T.*

*Co.*, 297 U. S. 606, 608, 80 L. Ed. 879, 881. The *McCaughn* case was a suit against the Collector of Internal Revenue to recover an alleged excess payment of Federal estate tax. The suit was therefore of the same nature as the protest proceedings here involved and therefore if the rule announced in the *McCaughn* case was binding on the Circuit Court of Appeals the same rule ought to apply and be binding upon the Court of Customs and Patent Appeals when reviewing a decision of the Customs Court, but apparently this Court has never made any pronouncement to that effect.

2. *The Courts Below Have So Construed Section 503, Subsections (a) and (b) of the Tariff Act as to Hold That the "Entered Value" Made Under Duress Became Binding Upon the Importer Because the Importer Failed to Make a "Duress Entry" Even Though the Conditions Defined by Said Section 503(b) Did Not Exist.*

No such result was ever approved under prior law. The question then is did Congress by the Tariff Act of 1930 intend to make possible such result. We think the public importance of such a question is obvious and that an authoritative decision by this Court is warranted.

3. *The Decision of the Court Below to the Effect That the Tariff Act Had Given Them No Adequate Power to Afford Relief Even Though Petitioner Was Abundantly Entitled Thereto Is in Conflict with Decisions of Several Circuit Courts of Appeal and Also in Conflict with a Prior Decision of the Court of Customs and Patent Appeals.*

In *Riccomini* v. *United States*, 69 F. (2d) 480, the Ninth Circuit Court of Appeals held that the United States District Court had no jurisdiction to allow a recovery of customs duties alleged to have been exacted under an unconsti-

tutional statute. That by Sections 514 and 515 of the Tariff Act of 1922, and by Section 195, Judicial Code, the Customs Court had been given complete and exclusive jurisdiction to determine such constitutional question and all other questions

> "including exactions of whatever character as to the rate and amount of duties chargeable under any provision of the customs revenue laws. Further, every such decision, order, and finding of a collector may be protested and reviewed."

In *Cottman Co.* v. *Dailey*, 94 F. (2d) 85, (4 C. C. A.) the importer sought to enjoin the Collector from assessing a special duty on certain phosphate rock. The court, speaking through Circuit Judge Parker, held that the district court had no jurisdiction because Congress by the Tariff Act of 1930 had vested in the Customs Court and the Court of Customs and Patent Appeals a

> "complete system of corrective justice regarding matters arising under the customs laws."

In *Patchogue-Plymouth Mills Corp.* v. *Durning*, 101 F. (2d) 41, (2 C. C. A.) the importer sued the Collector in the United States District Court to recover with interest certain duties paid on imported goods. The court, speaking through Circuit Judge Chase, held that the district court was without jurisdiction on the ground that the jurisdiction of the Customs Court was complete and exclusive, citing the *Cottman* case, *supra*, and the *Riccomini* case, *supra*.

The case of *David L. Moss Co.* v. *United States*, 103 F. (2d) 395, was a decision by the Court of Customs and Patent Appeals. The opinion was delivered by Circuit Judge Parker of the Fourth Circuit, who sat in the place of Judge Jackson. The importer, Moss & Company, had filed a protest under Section 514 of the Tariff Act (the same procedure

as here) against the Collector's liquidation and assessment of duty made on the importation of dried egg albumen. The Court of Customs denied relief on the ground that it was without authority to review and reverse the findings of fact made by the Tariff Commission when supported by substantial evidence. Judge Parker, speaking for the court, approved that result and again set forth the proper construction, purpose and intent of the Tariff Act as follows:

> "The court is a court of law, and it is granted full power to relieve against illegality in the assessment or collection of duties. 19 U. S. C. A. Sections 1515, 1518. If relief may not be had before it against illegal action under the flexible tariff provisions, relief may not be had anywhere; for its jurisdiction in such matters is exclusive. It is the tribunal established by Congress in the provision of a complete system of corrective justice for the administration of the customs laws, and questions involving the validity of official action in the imposition and collection of duties are properly cognizable before it to the exclusion of other courts. Cottman Co. *v.* Dailey, 4 Cir., 94 F. 2d 85, 88; Riccomini *v.* United States, 9 Cir., 69 F. 2d 480, 484; Gulbenkian *v.* United States, 2 Cir., 186 F. 133, 135; Nicholl *v.* United States, 7 Wall. 122, 130, 19 L. Ed. 125. There can be no question but that courts must exercise the judicial power vested in them to determine the legal validity of administrative action, where the validity of such action is involved in questions properly before them, whether they have been granted the right of review over action of the administrative agency or not. The duty necessarily arises because of their obligation to decide cases before them according to law. See Shields *v.* Utah Idaho Cent. R. R. Co., 305 U. S. 177."

The decisions of the Customs Court and of the Court of Customs and Patent Appeals disclaiming power to give petitioner relief in the cases at bar cannot be reconciled with

the four cases last above cited. This Court should settle the conflict.

WHEREFORE petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Customs and Patent Appeals commanding that Court to certify and send to this Court for its review and determination on a day certain to be named therein a full and complete transcript of the record and all proceedings in the cases numbered on its docket Customs Appeals Nos. 4395, 4396, 4397, 4398, 4399 and 4400, entitled as consolidated, Jacksonville Paper Company, a corporation, Appellant, *versus* The United States, Appellee, and that the judgment and decree of said United States Court of Customs and Patent Appeals in said causes be reversed by this Court and that the petitioner have such other and further relief in the premises as to this Court may seem just.

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